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ARNOLD & PORTER LLP

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September 18, 2006

**BY HAND**

Honorable Joseph J. Farnan Jr.  
United States District Court  
for the District of Delaware  
J. Caleb Boggs Federal Building  
844 N. King Street  
Wilmington, DE 19801

Re: *Stanziale. v. McGladrey & Pullen, LLP, et al.*,  
C.A. No. 1:05-cv-00072-JJF

Dear Judge Farnan:

We write jointly on behalf of defendants McGladrey & Pullen, LLP ("McGladrey") and Michael Aquino ("Aquino"), and plaintiff Charles A. Stanziale, Jr., Chapter 7 Trustee of Student Finance Corporation (the "Trustee"), seeking clarification regarding the Court's August 10, 2006 decision and order on McGladrey and Aquino's Motion to Dismiss The Trustee's Amended Complaint In Part (the "August 10 Order"). (D.I. 52). Specifically, the parties disagree whether the August 10 Order has triggered McGladrey and Aquino's time to answer the Trustee's Amended Complaint pursuant to Rule 12(a)(4). Pending the Court's resolution of this issue, the parties have agreed to extend McGladrey's and Aquino's time to answer the Amended Complaint.

The Trustee believes that the August 10 Order denied McGladrey's and Aquino's motion to dismiss, and there is no longer a Rule 12(b) motion pending in the case that tolls McGladrey's and Aquino's time to file an answer to the Amended Complaint. While defendants filed a supplemental brief in support of their motion to dismiss, it was not a separate motion and is not listed as pending on the docket. Accordingly, the Trustee has offered a short extension of the time to answer, but believes that the time has come for defendants to file their answer and affirmative defenses.

McGladrey and Aquino believe that this Court's June 6, 2006 order permitted Pepper Hamilton and any other party to move for relief based upon the Third Circuit's decision in *Seitz v. Detweiler, Hershey and Associates, P.C. (In re CitX Corp.)*, 448 F.3d 672 (3d Cir. 2006). McGladrey and Aquino filed that motion on July 6, 2006 as a Supplemental Memorandum of Law In Further Support of Motion To Dismiss The Trustee's Amended Complaint In Part (the "*Seitz Motion*"). Since the *Seitz Motion* to

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ARNOLD & PORTER LLP

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Hon. Joseph J. Farnan Jr.  
August 28, 2005.  
Page 2

dismiss remains pending before the Court, McGladrey and Aquino believe that their time to answer the amended complaint should remain tolled. If granted, that motion would be dispositive of all of the Trustee's tort claims, leaving only bankruptcy claims for fraudulent transfers. Thus, the outcome of the motion affects the substance of McGladrey's and Aquino's answers and affirmative defenses.

In light of the differences of opinion on this issue, the parties respectfully request clarification from the Court regarding the status of the *Seitz* Motion and defendants' time to answer the amended complaint. To that end, the parties have enclosed herewith two competing orders for the Court to consider. We are, of course, available to address the Court on this issue, should the Court find it helpful or necessary.

Respectfully submitted,



Jason M. Butler

cc: All counsel

Enclosures

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In re:

STUDENT FINANCE CORPORATION,  
Debtor.

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CHARLES A. STANZIALE, JR.,  
CHAPTER 7 TRUSTEE OF STUDENT  
FINANCE CORPORATION,

Plaintiff,

v.

McGLADREY & PULLEN, LLP and  
MICHAEL AQUINO,

Defendants.

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) Chapter 7

) Case No. 02-11620 (DDS)

) Adversary Proceeding No. 04-58003

) District Court Case No. 1:05-cv-00072-JJF

IT IS HEREBY ORDERED by this Court, as follows:

1. McGladrey & Pullen, LLP and Michael Aquino shall file answers to the Amended Complaint within 20 days of the Court's decision and order on defendants' Supplemental Memorandum of Law In Further Support of Motion To Dismiss The Trustee's Amended Complaint In Part. (D.I. 71).

Dated: September \_\_\_, 2006

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United States District Judge

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In re:

STUDENT FINANCE CORPORATION,  
Debtor.

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CHARLES A. STANZIALE, JR.,  
CHAPTER 7 TRUSTEE OF STUDENT  
FINANCE CORPORATION,

Plaintiff,

v.

McGLADREY & PULLEN, LLP and  
MICHAEL AQUINO,

Defendants.

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)  
) Chapter 7

)  
) Case No. 02-11620 (DDS)

)  
) Adversary Proceeding No. 04-58003

)  
) District Court Case No. 1:05-cv-00072-JJF

IT IS HEREBY ORDERED by this Court, as follows:

1. McGladrey & Pullen, LLP and Michael Aquino shall file answers to the Amended Complaint within 20 days of this Order.

Dated: September \_\_\_, 2006

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United States District Judge